

ORDINANCE NO. 2019-05-38

AN ORDINANCE CREATING CHAPTER 12.02 OF THE CITY CODE ENACTING A FREE EXPRESSION REGULATION ORDINANCE IN ACCORDANCE WITH THE REQUIREMENTS OF STATE LAW.

WHEREAS, Utah Code Title 11, Chapter 61 requires that political subdivisions ensure that time, place, or manner restrictions on expressive activity on public grounds comply with certain requirements;

WHEREAS, Utah Code §11-61-104 provides that cities may not impose certain restrictions on expressive activity unless the city has adopted an ordinance to guide the adoption, by policy or practice, of restrictions on expressive activity on public grounds;

WHEREAS, it is proposed that American Fork City provide time, place, and manner restrictions on expressive activity that comport with state and constitutional law;

WHEREAS, according to the United States Supreme Court “traditional public forum” refers to: a public park or street, *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983), or a public sidewalk, as defined by *United States v. Grace*, 461 U.S. 171, 179 (1983); and *United States v. Kokinda*, 497 U.S. 720, 727-29, 110 S. Ct. 3115, 3120-21 (1990);

WHEREAS, in those decisions the Supreme Court clarified that not all sidewalks built with public funds are “public sidewalks” or traditional public forums;

WHEREAS, to promote the health, safety and general welfare of the citizens of American Fork City, the Council finds it necessary to enact the Ordinance below;

NOW, THEREFORE, be it ordained by the City Council of American Fork, Utah, as follows:

1. Chapter 12.02 shall read as follows:

Section 12.02.010 – Free Expression Regulation

A. It is the declared public policy of American Fork City that persons and groups have a right to organize and participate in peaceful expressive activities including demonstrations, rallies, parades, signature gathering, marches, picketing or other similar actions conducted for the purpose of persons expressing their political, social, religious, or other views, and to do so on the public grounds of the City, as defined herein, near the object of their protest or action so they may be seen and heard, subject to reasonable restrictions designed to protect public safety, persons, and property and to accommodate the interests of persons not participating in the assemblies, including their interests in using the streets and sidewalks to travel to their intended destinations, and to use the parks and park facilities for recreational purposes.

B. In accordance with Utah Code §11-61-104, American Fork City shall only impose a generally applicable time, place, and manner restriction on expressive activity on public grounds by ordinance or by policy or practice that comports with this Section.

C. For purposes of this Section:

1. “Public grounds” means the area outside of a public building, as that term is defined in Utah Code Section 11-61-102(5), that is a traditional public forum where members of the public may safely gather to engage in expressive activity.

i. “Public grounds” do not include:

(a) the interior of a public building; or

(b) any public property that is not a traditional public forum, such as, but not limited to, sidewalks constructed primarily to assist patrons to negotiate the space between the parking lot and the door, and not to facilitate the daily commerce and life of the neighborhood, and other areas as defined in accordance with the rulings of the United States Supreme Court.

2. “Traditional public forum” refers to: a public park or street, or a public sidewalk, as defined by the United States Supreme Court, or as that Court may later define it.

D. In accordance with Utah Code Section 11-61-103, this Section does not apply to:

1. A restriction on expressive activity on public grounds that is imposed in order to comply with Utah Code Title 20A Election Code;

2. Property that American Fork owns or leases that is closed to public access or where state or federal law restricts expressive activity; or

3. A limited or nonpublic forum.

E. A generally applicable or individually applicable time, place, and manner restriction on expressive activity on public grounds imposed by ordinance, policy, or practice must comport with state law, constitutional law, and case law, and, in accordance with Utah Code Section 11-61-104, must be:

1. Narrowly tailored to serve an important governmental interest, including public access to the public building, public safety, and protection of public property;

2. Unrelated to the suppression of a particular message or the content of the expressive activity that the restriction addresses; and
3. Leave open reasonable alternative means for the expressive activity.

F. This ordinance is not intended to infringe on the rights individuals have to use public forums in accordance with state law.

SEVERABILITY

If any provision or clause of this chapter or its application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses, or applications which can be implemented without the invalid provision, clause, or application. To this end, the provisions of this chapter are declared to be severable.

EFFECTIVE DATE

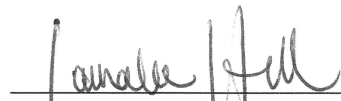
This amendment to the ordinance shall become effective on the date passed by the City Council of American Fork.

PASSED AND ADOPTED BY THE AMERICAN FORK CITY COUNCIL, STATE OF UTAH, ON THIS 28 DAY OF MAY, 2019.

AMERICAN FORK CITY:


MAYOR BRADLEY J. FROST

ATTEST:


LAURALEE HILL
DEPUTY RECORDER

